

MRL303P

October/November 2010

LABOUR LAW (MERCANTILE LAW 303)

Duration 2 Hours

100 Marks

 EXAMINERS
 FIRST
 SECOND

 PROF AH DEKKER
 PROF ME MANAMELA

This paper consists of 3 pages

PLEASE NOTE:

- **The Labour Relations Act, 1995 is referred to as the "LRA".**
- **The Basic Conditions of Employment Act, 1997 is referred to as the "BCEA".**
- **The Employment Equity Act, 1998 is referred to as the "EEA".**
- **Read all questions carefully before you answer them.**
- **Answer all questions.**

QUESTION 1

- 1 1 List the five types of dismissal which are contained in section 186 of the LRA (5)
- 1 2 Who are the beneficiaries of affirmative action in terms of the EEA? (3)
- 1 3 Is the testing of employees in order to determine their HIV status allowed in terms of the EEA? Discuss briefly. (2)
- [10]**

QUESTION 2State whether the following statements are **TRUE** or **FALSE**, and also motivate your answer

- 2 1 The LRA applies to members of the South African Defence Force (2)
- 2 2 Employment conditions agreed to in a contract of employment will always overrule the minimum conditions set by the BCEA. (2)
- 2 3 An employment contract can exist where the employer and employee did not agree on the exact amount of remuneration to be paid to the employee. (2)

[TURN OVER]

- 2.4 The employer is compelled to provide the employee with work. (2)
- 2.5 In order to determine if someone is an employee or independent contractor the court will only consider the control test. (2)
- 2.6 The LRA compels an employer to give at least three warnings before an employee is dismissed on the basis of misconduct. (2)
- 2.7 A restraint of trade clause in a contract is not enforceable if the employee is dismissed by the employer on the basis of misconduct. (2)
- 2.8 The BCEA provides that an employee is entitled to four months' unpaid maternity leave. (2)
- 2.9 A director of a company would normally not be protected against unfair dismissal in terms of the LRA. (2)
- 2.10 A director of a company would normally not be protected by the BCEA with regard to working hours. (2)
- [20]**

QUESTION 3

Susan is working as a nurse at the University Hospital in Durban. On the 1st of January she comes to work wearing a nose-stud. Her supervisor, Sister Thandi, tells her to remove the nose-stud because it is against the code of conduct for nurses prescribed by the Hospital. Susan refuses to remove it and she and Thandi get into a fight which results in Susan calling Thandi a "conservative cow". Thandi accuses Susan of insubordination. Susan is subsequently dismissed and she comes to you for advice.

- 3.1 Would Susan's dismissal be substantively fair if Susan has never heard of the rule about the nose-stud? Explain. (5)
- 3.2 Assume that Thandi and Susan meet each other after work at the pub across from the hospital. Susan again calls Thandi a "conservative cow". They start to fight and Susan punches Thandi in the face. Susan is of the opinion that the employer cannot take disciplinary action against her for misconduct after working hours and off the premises of the employer. Discuss briefly. (5)
- 3.3 Assume that Thandi suffers a nervous break-down after the incident. She is booked off from work for an indefinite period. Can the employer dismiss her? If so, discuss on what basis as well as the procedure the employer should follow. (5)
- 3.4 Assume that the hospital runs into financial difficulties as a result of the extensive legal battles that followed Susan's dismissal. As a result the hospital will have to retrench personnel. Briefly advise the hospital on the appropriate procedures which must be followed before it may commence with the retrenchment of the employees. (5)
- 3.5 Assume that the employer makes life difficult for Susan after she successfully got reinstated. She must work terrible shifts and the employer also transfers her to the Far East rural KwaZulu Natal Hospital. She wants to resign. Advise Susan whether this will be a good idea. (5)

- 3 6 Assume that Susan did not resign and was transferred to the Far East rural KwaZulu Natal Hospital. This was 4 years ago already and since then she did not get any promotion or salary increase. Will she have any remedy against the employer? Discuss in detail. (5)
[30]

QUESTION 4

- 4.1 What are the six limitations imposed by the LRA on the employer's recourse to a lock-out? (6)
- 4.2 Briefly discuss the three different ways in which a trade union can acquire organisational rights. (6)
- 4.3 The right of access to information is one of the organisational rights contained in the LRA. Discuss what information must be disclosed to a representative trade union. (4)
- 4.4 Define a "collective agreement"? (4)
[20]

QUESTION 5

- 5.1 Draw a distinction between a "closed shop agreement" and an "agency shop agreement". (4)
- 5.2 One Wednesday morning, RR Granite (RRG), a company that manufactures granite for kitchen tops, is greeted by members of Worker's Power Union (WPU) outside the company gates. The workers refuse to start their shift on time and on enquiry RRG is informed that the workers are unhappy because of the government's decision to increase VAT. Discuss whether the action by members of WPU will constitute a strike. (10)
- 5.3 Without following the procedure as prescribed by the LRA for protected strikes, members of United Employees Union (UEU), employed by Millennium Construction (MC) go on strike in demand of a 15% wage increase. Briefly discuss legal consequences of such a strike. (6)
[20]

TOTAL: [100]